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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 UNITED STATES OF AMERICA,

23 Case No. CR 06-00556 CRB (EMC)

24 Plaintiff,

25 **[PROPOSED] STIPULATED
26 CONFIDENTIALITY ORDER**

27 v.
28 GREGORY L. REYES and STEPHANIE
JENSEN,

29 Defendants.

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1 In order to protect the confidentiality of confidential information subpoenaed by
 2 defendant Stephanie Jensen in this case, KPMG LLP (“KPMG”) represented by Sidley Austin
 3 LLP, and defendant Stephanie Jensen hereby agree as follows:

4 1. KPMG, or at the request of KPMG, Brocade Communication Systems, Inc.
 5 (“Brocade”), may designate as “confidential” (by stamping the relevant page or as otherwise set
 6 forth herein) any document or response to a subpoena which it considers in good faith to: (i)
 7 contain information involving trade secrets, or confidential business or financial information,
 8 subject to protection under the Federal Rules of Civil Procedure or California law; or (ii)
 9 contain confidential information of a person that is protected by a right of privacy under
 10 applicable law. Where a document or response consists of more than one page, the first page
 11 and each page on which confidential information appears shall be so designated.

12 2. KPMG, or at the request of KPMG, Brocade, may designate information
 13 disclosed during a deposition as “confidential” by so indicating on the record at the deposition
 14 and requesting the preparation of a separate transcript of such material. Additionally, KPMG, or
 15 at the request of KPMG, Brocade, may designate in writing, within twenty (20) days after receipt
 16 of the deposition transcript for which the designation is proposed, that specific pages of the
 17 transcript be treated as "confidential" information. Any party may object to such proposal, in
 18 writing or on the record. Upon such objection, the procedures described in paragraph 7 below
 19 shall be followed. After any designation made according to the procedure set forth in this
 20 paragraph, the designated documents or information shall be treated according to the designation
 21 until the matter is resolved according to the procedures described in paragraph 7 below.

22 3. All information produced by KPMG to defendant Stephanie Jensen in the course
 23 of this case (other than information that is publicly available) shall be used solely for the purpose
 24 of this case and any related criminal or civil proceedings currently pending.

25 4. Except with the prior written consent of KPMG, or upon prior order of this Court
 26 obtained upon notice to KPMG, anything designated as confidential pursuant to the terms of this
 27 Order (“Confidential Information”) shall not be disclosed to any person other than:

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- 1 (a) counsel for the respective parties to this litigation who have
2 agreed to be bound by the terms of this Order, including
3 defendants' counsel and counsel for the Securities and
4 Exchange Commission;
- 5 (b) employees of such counsel;
- 6 (c) individual defendants, to the extent deemed necessary by counsel for the
7 prosecution or defense of this litigation;
- 8 (d) consultants or expert witnesses retained for the prosecution or defense of
9 this litigation, provided that each such person shall execute a copy of the
10 Certification annexed to this Order (which shall be retained by counsel to
11 the party so disclosing the Confidential Information and made available
12 for inspection during the pendency or after the termination of the action
13 upon good cause shown and upon order of the Court) before being shown
14 or given any Confidential Information and provided that if the party
15 chooses a consultant or expert employed by one of Brocade's competitors
16 or customers, the party shall notify KPMG and Brocade before disclosing
17 any Confidential Information to that individual and shall give KPMG and
18 Brocade an opportunity to move for a protective order preventing or
19 limiting such disclosure;
- 20 (e) any authors or recipients of the Confidential Information;
- 21 (f) the Court, Court personnel and court reporters; and
- 22 (g) witnesses, at deposition and/or trial, only to the extent necessary to give
23 their testimony. At the request of any party, the portion of the transcript
24 involving the Confidential Information shall be designated "Confidential"
25 pursuant to paragraph 2 above. Witnesses shown Confidential
26 Information shall not be allowed to retain copies.

27 5. Any persons receiving Confidential Information shall not reveal or discuss such
28 information to or with any person who is not entitled to receive such information, except as set

1 forth herein.

2 6. For applications and motions to the Court on which a party submits Confidential
3 Information, all documents and chamber copies containing Confidential Information which are
4 submitted to the Court shall be filed with the Court, in sealed envelopes or other appropriate
5 sealed containers. On the outside of the envelopes, a copy of the first page of the document shall
6 be attached. If Confidential Information is included in the first page attached to the outside of
7 the envelopes, it may be deleted from the outside copy. The word "CONFIDENTIAL" shall be
8 stamped on the envelope and a statement substantially in the following form shall also be printed
9 on the envelope:

10 This envelope is sealed pursuant to order of the Court, contains
11 Confidential Information and is not to be opened or the contents
revealed, except by Order of the Court or agreement by the parties.

12 In the event that the Clerk's Office refuses to accept a document filed under seal, the
13 filing party shall, not later than the next business day, file a notice indicating which documents
14 the party attempted to file. The filing party shall also serve a copy of the rejected filing by
15 overnight mail on KPMG and Brocade. If KPMG or Brocade wish to contest the public filing
16 of the document, they must file a motion to that effect within five (5) business days of the
17 initial filing date. If no motion is received, the filing party may file the document publicly
18 within seven (7) business days of the initial filing. If a motion is filed to permit the filing to be
19 made under seal, the filing party may not file the document with the confidential material
20 included therein until the motion is resolved. This procedure shall not affect any Court order or
21 other rule regarding the scheduling for future filings. All requests to file any material under seal
22 must also comport with Civ. L.R. 79-5.

23 7. If a party contends that any material is not entitled to confidential treatment, such
24 party may at any time give written notice to KPMG. KPMG, or at their request Brocade, shall
25 have twenty-five (25) days from the receipt of such written notice to apply to the Court for an
26 order designating the material as confidential.

27 8. Notwithstanding any challenge to the designation of material as Confidential
28 Information, all documents designated as confidential shall be treated as such and shall be

1 subject to the provisions hereof unless and until one of the following occurs:

2 (a) KPMG withdraws such designation in writing; or

3 (b) KPMG or Brocade fail to apply to the Court for an order designating the

4 material confidential within the time period specified above after receipt

5 of a written challenge to such designation; or

6 (c) the Court rules the material is not Confidential Information.

7 9. All provisions of this Order restricting the communication or use of Confidential

8 Information shall continue to be binding after the conclusion of this action, unless otherwise

9 agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential

10 Information, other than that which is contained in pleadings, correspondence and transcripts,

11 shall either (a) return such documents to counsel for the party or non-party who provided such

12 information no later than thirty (30) days after a request by such counsel, or (b) destroy such

13 documents within ninety (90) days following the conclusion of this action and all appeals and

14 certify in writing within thirty (30) days following destruction that the documents have been

15 destroyed.

16 10. If confidential information is inadvertently produced without marking it as such, it

17 may be disclosed to others until the receiving party becomes aware of the error. As soon as the

18 receiving party becomes aware of the inadvertent production, the information must be treated as

19 though it had been timely designated under this Confidentiality Order, and the receiving party

20 must endeavor in good faith to obtain all copies of the documents that it distributed or disclosed

21 to persons not authorized by Paragraph 4 herein, as well as any copies made by such persons.

22 11. Nothing herein shall be deemed to waive any applicable privilege or work product

23 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material

24 protected by privilege or work product protection.

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12. This Order shall not apply to or affect the use of information already in the possession of a party or obtained by a party outside the course of discovery in this litigation.

Respectfully submitted,

Dated: February 1, 2007

SIDLEY AUSTIN LLP

By: /s/ Geoffrey M. Ezgar
GEOFFREY M. EZGAR
Attorneys for Third Party
KPMG LLP

Dated: February 1, 2007

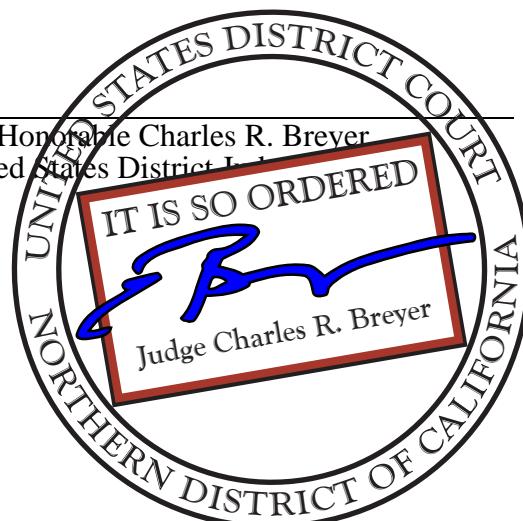
KEKER & VAN NEST, LLP

By: /s/ Jan Nielsen Little
JAN NIELSEN LITTLE
Attorneys for Defendant
STEPHANIE JENSEN

**THE FOREGOING STIPULATION
IS APPROVED AND IS SO ORDERED.**

Dated: February 02, 2007

The Honorable Charles R. Breyer
United States District Judge



1 **APPENDIX A**

2 **CERTIFICATION**

3 I hereby certify my understanding that Confidential Information is being provided to me
4 pursuant to the terms and restrictions of the Confidentiality Stipulation and Order dated

5 _____ in *United States of America v. Gregory L. Reyes and Stephanie*
6 *Jensen*, CR 06-00556 CRB (EMC) (N.D. Cal.). I have been given a copy of that Order and read
7 it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone,
8 except as allowed by the Order. I will maintain all such Confidential Information -- including
9 copies, notes or other transcriptions made therefrom -- in a secure manner to prevent
10 unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will
11 return the Confidential Information -- including copies, notes or other transcriptions made
12 therefrom -- to the counsel who provided me with the Confidential Information. I hereby
13 consent to the jurisdiction of the United States District Court for the Northern District of
14 California for the purpose of enforcing the Confidentiality Order.

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16 SIGNATURE: _____

17 DATED: _____